

**Delta Methylmercury Total Maximum Daily Load
and Basin Plan Amendment
Stakeholder Informational Meeting**

DRAFT MEETING SUMMARY

MEETING DATE: December 19, 2008

LOCATION: Davis Public Library, Blanchard Room
315 E. 14th Street
Davis, CA

ATTENDEES: See attachment

ACTION ITEMS

1. The Center for Collaborative Policy (CCP) will draft a set of next steps and work with the Central Valley Regional Water Quality Control Board (CVRWQCB or Board) to finalize a stakeholder process. CVRWQCB staff will communicate the proposed process to stakeholders and poll participants for potential future meeting dates.
2. CVRWQCB will add everyone who requested to be added to the Delta Methylmercury (MeHg) Total Maximum Daily Load (TMDL) listserv.
3. CCP will include a list of attendees with this meeting summary (see attachment).

MEETING SUMMARY

Welcome, Introductions, and Agenda Review

Facilitator Dave Ceppos, CCP, welcomed everyone and reviewed the purpose of the meeting:

- Present the findings from the stakeholder assessment conducted by CCP;
- Conduct an open discussion of proposed next steps;
- Determine the future meeting schedule.

Mr. Ceppos described the meeting as an informational kickoff for a possible stakeholder process for the Delta MeHg TMDL and the Basin Plan Amendment. He stated that the goal of the meeting was to have an open dialogue. Mr. Ceppos reviewed the agenda. Self introductions followed.

CVRWQCB Welcome

Pamela Creedon, Executive Officer, CVRWQCB, thanked the group for attending. She commented that the number of different organizations present indicates that the Delta MeHg TMDL is a central issue. She stated that the TMDL is very complex, with many affected and interested stakeholders including water suppliers, agriculture, wetlands managers, waste water and stormwater dischargers, environmentalists, and other stakeholders. Ms. Creedon commented that CVRWQCB staff has been working on this TMDL for four years with the goal of reducing MeHg and improving water quality in the Delta in a manner that addresses stakeholders concerns. She acknowledged the issues that stakeholders have raised and thanked them for their participation. Ms. Creedon assured the group that the CVRWQCB staff has been listening to them, but recognized that what has been missing is the opportunity for everyone to come together and discuss the issues.

At the last Board meeting, Board members and staff heard stakeholders express their desire to engage more collaboratively in the completion of the TMDL. The CVRWQCB supports this approach. Contracting with CCP to assess the feasibility of a stakeholder process is a beginning. Meeting in a venue away from the CVRWQCB's offices is an indication that this is a different process than before. She commented that it was time to begin that open dialogue.

Ms. Creedon stated that it is critical for the Board to complete the Delta MeHg TMDL; doing nothing is not an option. She explained that the Board made commitments to the U.S. Environmental Protection Agency (EPA) to have the TMDL ready for Board approval by June 2009. Ms. Creedon pointed out that the current draft of the TMDL addresses many of the issues raised by stakeholders. She hopes to build on and refine the work that has been done to date, rather than starting over.

Ms. Creedon reminded stakeholders of the necessary regulatory role that the Board must play. She challenged stakeholders to work together to help staff create a workable, flexible TMDL that balances regulatory mandates with stakeholder needs.

Stakeholder Assessment

Referring to the handout, Mr. Ceppos noted that the Briefing Summary is a summary of the stakeholder assessment, not the full assessment report. CCP interviewed a total of 60 people - some in groups, and some individually. He stated that CCP maintains responsibility for the selection of those interviewed and the interview questions.

Mr. Ceppos explained that the information collected in the interviews is confidential – and nothing in the summary – or final report – is attributed to any one stakeholder. He also explained that CCP does not go into an assessment process assuming that a stakeholder group will be formed; sometimes CCP recommends that the process does not go forward. He further described that through the assessment, CCP looks for “themes and trends” that are used to inform if and how a stakeholder process should happen. The results are not a statistical / numeric analysis. Rather, the assessment information is analyzed using the best professional judgment of highly experienced facilitation and mediation specialists at CCP.

The Briefing Summary is organized into three sections: findings, analysis, and recommendations. CCP uses qualitative words like *many*, *various*, *a majority*, and *some* to present the information in a balanced manner.

Findings

Ms. Ceppos presented the following findings:

- The stakeholders understand that MeHg poses a risk, but disagree about the level of risk.
- There is unanimous realization among stakeholders that the Board has the authority to make decisions.
- Many stakeholders reported they do not understand the purpose of a TMDL.
- There is uncertainty about how the TMDL will impact individual stakeholders.
- There is a question about the flexibility of the TMDL to address the diversity of affected stakeholders - and what level of latitude will be incorporated into the TMDL. Will flexibility help achieve the long-term goal of MeHg reduction or will it allow certain stakeholders to be exempt from regulation?
- Some stakeholders expressed concern about technical and economic uncertainties. How will they balance seemingly small benefits of MeHg reduction with the economic burden that will have to be funded by ratepayer increases?
- There is a concern about the fish tissue concentrations. Some stakeholders think that fish tissue represents the best data; some do not.
- There is general agreement that studies should be done, and that the studies should be coordinated to prevent duplication of effort and expense. There is broad disagreement on who should pay for the studies.
- Stakeholders expressed a high level of dissatisfaction with the public input process to date.

Analysis

Mr. Ceppos explained that the TMDL is a legally required action through the Federal Clean Water Act (CWA), and as such, the Board and EPA are not co-equal with other stakeholders. The Board has final decision-making authority due to the regulatory process. He noted that the stakeholders who CCP spoke to were not asking to become regulators; they want the opportunity to inform the regulatory process, clarify the objectives of the TMDL, and jointly resolve conflicts between stakeholders, while developing solutions for MeHg control and reduction that the Board can consider.

Mr. Ceppos commented that there appears to be a disconnect between what CVRWQCB staff are saying and what the stakeholders report they are hearing. Staff feels they have incorporated many stakeholder suggestions into the TMDL and Basin Plan Amendment, yet stakeholders report that their suggestions are not being considered. Mr. Ceppos reported that the big question to CCP therefore was: “why aren’t people hearing each other?” CCP has concluded that the steps Board staff has taken to involve the public are legally adequate, but not necessarily effective. The missing piece is the opportunity for all stakeholders to sit in the same room at the same time to resolve issues. The assessment found that stakeholders want an open 2-way dialogue with staff and other affected and interested parties.

Further, because of historical regulatory and enforcement conditions between the Board and stakeholders, there is minimized trust. This minimized trust has led to stakeholder uncertainty regarding regulatory requirements and future enforcement. This uncertainty is creating fear. Stakeholders are worried that they will not be treated equitably and that enforcement related impacts will threaten their respective interests. Under such conditions, affected parties are less likely to hear and understand the sentiments of others. This is the likely condition by which stakeholders and staff each feel like they have not been heard and understood through previous iterations of the draft TMDL.

Some interviewees question why MeHg in the Delta is being singled out to regulate while other pollutants with greater perceived impacts are not being addressed. Mr. Ceppos commented that these are legitimate questions, but do not affect why the Board needs to address the impaired water body. He explained that the Board is required to address impaired water bodies – and MeHg is the constituent of concern. It does not minimize other pollutants, but the reduction and control of MeHg does have to be addressed.

There was acceptance by stakeholders that not everyone is going to get what he or she wants. However, focused discussions between stakeholders can hopefully balance competing stakeholder interests with the need to control and reduce MeHg loads. Mr. Ceppos pointed out that a TMDL is comprised of 2 parts: a technical TMDL that includes a load allocation and a separate implementation plan included in the Basin Plan Amendment. The technical TMDL is a Federal requirement through the CWA. However the CWA does not require an

implementation plan. That is a State of California requirement. CCP believes that a stakeholder group could focus first on the technical TMDL in an attempt to meet the EPA's intended timeline for project completion. This could also include an adaptive framework that lays the basis for the implementation plan. This adaptive implementation plan would then be refined over time to be more specific as conditions warrant. .

Lastly, there were a high number of stakeholders who believe that the State and Federal governments should take responsibility for the reduction and control of total mercury (Hg) since the primary source of the contaminant is legacy mining. There was no consensus on who should shoulder the financial burden. Mr. Ceppos commented that stakeholder coalitions might advocate for funding support through grants, legislation, and other means.

Recommendations

CCP supports the Board convening a representative stakeholder group for the Delta MeHg TMDL. An underlying question is whether this dialogue process will result in proposed load allocations and implementation steps, or if the process will be more informational; giving stakeholders a chance to discuss differences and similarities but not engage in a decision-making process. On behalf of CCP, Mr. Ceppos made the following recommendations:

- Create a bifurcated TMDL: address the technical aspect of the TMDL (load allocations) and create an implementation framework with an adaptive management component that the Board could approve. This would allow additional time to develop a long-range adaptive implementation plan. The process would be consensus seeking but not consensus based as follows:
 - Focus first on identifying shared opportunities for improved implementation methods (1 month)
 - Focus next on rapidly completing allocation recommendations on the "technical TMDL" (2 months)
 - Return focus to expanding recommendations for a very flexible, adaptive implementation plan (2 months)
 - Deliver a "package" of the technical TMDL and adaptive Implementation Plan to the Board to support the Basin Plan amendment process (within 5 months)
- Convene a subsequent stakeholder process to engage in a longer term, consensus-seeking approach to design a more specific implementation plan using an adaptive approach to meet the amended Basin Plan without requiring re-amendment with each iterative update.
- Conduct immediate educational meetings to bring all stakeholders up to a shared minimum level of understanding of the TMDL regulatory process.

- Enhance existing agency partnerships and leverage potential stakeholder partnerships to improve angler understanding of the MeHg risks.

Mr. Ceppos concluded that the assessment found that stakeholders are seeking equitable solutions. He also noted that there seemed to be general support in the room for a stakeholder process. To move the process forward, CCP will create a stakeholder process design including using the 10 key issues and creating a series of meeting agendas (**see Action Item 1**).

Discussion of Findings and Analysis

Mr. Ceppos asked stakeholders to comment on the assessment summary and voice any issues or concerns. The following comments were recorded:

- In addition to the broad representation of state and local government agencies interviewed, should additional community organizations be contacted and interviewed since they represent people fishing in the Delta?

CCP Response: Twelve community groups were invited to be interviewed; five were able to participate. It will be important to have representation from community groups in the stakeholder process.

- There are some private organizations that represent Agriculture, but there are many Agriculture farmers not represented by those organizations. How do you get their voice?

CCP Response: working through the Resource Conservation Districts or land coalitions would be a good venue.

- A stakeholder group should include an educational component to normalize the level of understanding of a TMDL.
- Is it possible that MeHg regulation doesn't fit the federal regulatory framework? Is a TMDL to control and reduce MeHg the appropriate approach?
- What level of reduction is really achievable?
- Protection of public health is important.
- The focus of the TMDL should be on source control, reduction, and remediation.

- There is a need for both short-term and long-term solutions to reduce MeHg.
- A policy discussion needs to take place over competing values: wetlands, flood control, water quality, agriculture, etc.
- Flexibility is an important part of the TMDL; as new data is discovered, there must be a mechanism to incorporate the data into the implementation plan.
- It is important that stakeholders understand the TMDL process including Board responsibilities.
- Resource Conservation Districts and the Delta Resource Conservation & Development Area Council should be included in the stakeholder process.
- Some stakeholders question the appropriateness of the TMDL process for MeHg in the Delta.

EPA Response: throwing out the statute is not an option.

During the discussion, EPA representatives agreed that the need is to reduce total mercury.

Recommendations and Next Steps

Mr. Ceppos asked participants for suggestions on how to proceed. The following comments were recorded:

- A suggestion was made to identity and form coalitions at today's meeting.

Note: The group agreed to defer this activity until the end of the meeting. At the end of the meeting, the group agreed to postpone this until a stakeholder process design is created.

- To allow maximum participation, consider using an open process design (open to all interested parties) rather than limit the process to designated representative stakeholders. Research suggests that stakeholders prefer the open process, it allows for more dialogues, and likely leads to less litigation. Also, allow workgroups to be open to all interested parties.
- Add "Regulatory Structure and Applicability" to the Assessment Recommendations.

- Stakeholders would like the opportunity for open discussion with Board staff to work through issues in a real-time environment.
- Do not sacrifice progress on the TMDL for the sake of a schedule. There are a lot of areas that we are in agreement that can be built on.
- Need assurances that stakeholder input is implemented by the Board.

Response from Pamela Creedon: I am committed to a stakeholder process, and hope we can come to a general agreement. I cannot promise you what will happen. But if no one is in opposition to the document we present to the Board, it is likely they will agree to it. I will promise you that staff will listen.

- Stakeholders want to be involved in developing language for the TMDL and Basin Plan Amendment because we all have to live with the final product.
- Is the timeframe realistic to develop an acceptable TMDL? Also, is there support for the rationale for bifurcating the technical TMDL and the Implementation Plan?

EPA Response: if there is a good rationale, EPA would be willing to consider extending the deadline. However, there is a lot to be done. I do not think that everything in the implementation plan needs to be worked out in the next four months. The technical side of the TMDL needs to be approvable. How you adapt it and implement can be determined in the future? EPA does not want to hold up the technical TMDL process.

CVRWQCB Board Member Response: artificial deadlines are less important than a good work product. If people are moving along in that fashion, I would be open to extending the deadline.

- Education is important so all stakeholders understand the purpose and process of a TMDL and Basin Plan Amendment.
- There is a need to interface with other Delta processes (e.g. Bay Delta Conservation Plan, Central Valley Flood Protection Plan, etc.) to build partnerships.
- The CalFed science program could assist with coordination of studies, synthesis of data, and overall science.
- The technical TMDL has not changed a whole lot in four years but there is a lot of new science. The TMDL should be reevaluated. There is a good science concept that decision-making should be led by good science.

- The goal of the stakeholder group should be to consider creative solutions and include a variety of partners to bring as many points of view as possible into the room.
- Another goal of the process should be to educate stakeholders on each others issues and interests (ex. Publicly Owned Treatment Works and subsistence anglers). Negotiation and compromise is more likely to be successful if each stakeholder is able to understand the issues and needs of the other stakeholders.
- The Implementation Plan could be, at a minimum, a policy statement that includes the stakeholder Charter and a timeline. It should also include periodic Board review and updates that don't require a Basin Plan Amendment.
- The studies should be relevant and unbiased, not necessarily equitable. There are not a lot of studies that tell us much about implementation. Stakeholders should help design practical studies. Stakeholder involvement does not necessarily introduce bias into the design.
- The Board is looking for consensus-based recommendations. If this group wants to move quickly, consensus is a good thing.
- A good starting place for a stakeholder process may be a review of the response to comments from the April Board meeting.

Summary

Mr. Ceppos thanked the group for their feedback and stated that while he heard friendly amendments, he did not hear any compelling opposition to moving forward.

Ms. Creedon thanked Sacramento Regional County Sanitation District for the start-up money and CCP for putting together the meeting. She also thanked all the participants, acknowledging that the Friday before Christmas was a difficult day to meet. Ms. Creedon commented there was more agreement than originally thought. She committed to keep the Board engaged throughout the process and wished the group Happy Holidays.

CCP will work on a process design within the coming weeks (**see Action Items #1 and 2**). The attendance list will also be made available to everyone (**see Action Item #3**).

Handouts

- Agenda
- Delta MeHg TMDL Briefing Summary